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Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Comprehensive report on the results of the implementation of the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Note by the Secretary-General

Summary

The General Assembly, in its resolution 54/239 B of 15 June 2000, (a) took note of the report of the Expert Group to conduct a review of the effective operation and functioning of the International Tribunals, established by the Secretary-General pursuant to General Assembly resolutions 53/212 and 53/213, and the note by the Secretary-General transmitting comments thereon (A/54/850); (b) endorsed the observations and recommendations of the Advisory Committee on Administrative and Budgetary Questions contained in its report (A/54/874); and (c) requested the Secretary-General to submit a comprehensive report on the results of the implementation of the recommendations of the Expert Group to the General Assembly at its fifty-sixth session.

The present report is submitted in response to the above request contained in resolution 54/239 B and outlines the results of the implementation of the recommendations of the Expert Group.

The General Assembly is requested to take note of the report on the results of the implementation of the recommendations of the Expert Group.

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I. Introduction

1. Pursuant to General Assembly resolutions 53/212 and 53/213 of 18 December 1998, an Expert Group to conduct a review of the effective operation and functioning of the International Tribunal for the Former Yugoslavia (ICTY) and the International Tribunal for Rwanda (ICTR) was appointed by the Secretary-General.

2. The report of the Expert Group was submitted to the Secretary-General on 11 November 1999; and on 22 November 1999, the Secretary-General transmitted the report to the Security Council and the General Assembly (S/2000/597 and A/54/634). The comments of the Secretary-General (A/54/850) on the report of the Expert Group were subsequently submitted to the General Assembly on 27 April 2000. The report of the Expert Group contained 46 recommendations, of which 16 had already been put into practice by the Tribunals at the time of the preparation of the report to the Assembly at its fifty-fourth session, 11 were expressly indicated as subject to further review by the Chambers of one or both Tribunals, and the balance of the other recommendations were in different stages of review for acceptance or otherwise.

3. The paragraphs below contain comments of both Tribunals and are presented under each of the 46 recommendations, as applicable. To facilitate the General Assembly's review of the implementation of the Expert Group's recommendation, paragraph references to the report of the Group (A/54/634) are given in parentheses at the end of each recommendation.

II. Action taken by the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda since the issuance of the report of the Expert Group

A. International Tribunal for the Former Yugoslavia

4. Since the issuance of the report of the Expert Group in November 1999, several changes have taken place within the ICTY, partly based on the Expert Group's recommendations themselves, partly only in the vein of them.

5. As a general response to the report, a reform plan has been adopted to accelerate court proceedings. Trial capacity has been doubled with the addition of ad litem judges as authorized by the Security Council in its resolution 1329 (2000) of 5 December 2000 and by the General Assembly in its resolution 55/225 B of 12 April 2001. In September 2001, six ad litem judges out of a pool of 27 started their work in the Trial Chambers. Subsequently, one more ad litem judge was recruited and has commenced duties.

6. A new rule 65 ter has been adopted, which introduces, among other things, the possibility of delegation of pre-trial activities by the judges to the Senior Legal Officers, allowing the judges to concentrate on trials and judgements. Rule 92 bis has also been adopted, which introduces the admissibility of written evidence under certain circumstances. It is envisaged that as a result of this new rule a considerable number of witnesses will no longer be required to travel to The Hague to testify orally in court.

7. Perhaps the most significant consequence of the above-mentioned reforms is that the period of operation of the Tribunal may now be substantially reduced. Taking into account the criminal policy of the Prosecutor, it is anticipated that the trials will be completed by 2008 (and appeals by 2010) instead of the originally envisaged date of 2018. Accordingly, the cost-saving effect to be derived would be considerable.

8. In expectation of an earlier completion of trials and appeals, the Tribunal's Coordination Council (President, Prosecutor and Registrar) is currently discussing details of an "exit strategy" related to the completion of the mandate of the Tribunal which will include, inter alia, the transfer of cases to the domestic jurisdictions of the countries in the former Yugoslavia.

B. International Tribunal for Rwanda

9. Several important changes have taken place in the operation and functioning of ICTR since the Expert Group report was issued in November 1999. These changes, some of which have been spurred by the recommendations of the Expert Group report, and others based on the internal initiatives of the Tribunal, have all been geared towards fulfilling the intent and

spirit of the Expert Group's report, namely, achieving a more effective functioning of the International Tribunal.

10. The Trial Chambers of the Tribunal are now handling a heavy trial docket as a result of reforms introduced in the judicial work of the Tribunal. Currently, 17 individuals are on trial in seven cases. Another trial of four accused persons is scheduled to open on 2 April 2002, and judgements in a number of trials currently under way are expected in the coming months. This heavy trial schedule is the result of a system of "twin-tracking" that has been introduced by the judges since 2001, in which each Trial Chamber is adjudicating at least two trials in rotation, and in the case of one Trial Chamber, three trials.

11. Other important reforms include the assignment of two trial judges to the Appeals Chamber of the Tribunal, bringing the total number of judges of that Chamber to seven and strengthening its capacity to handle appeals, and the adoption of a new rule 73 (A) that provides for the disposal of motions on the basis of written briefs as opposed to the necessity, hitherto, of holding oral arguments for every motion. In addition, the Tribunal's judges have developed greater control of judicial proceedings and have increasingly dismissed "frivolous" motions, mostly by defence teams, and ordered non-payment of fees to defence counsel for filing such motions. Given the fact that the Expert Group report identified these elements of "excessive lawyering" and the need for greater judicial proceedings as some of the major constraints on the effective functioning of the two Tribunals, the impact of these reforms in the International Tribunal for Rwanda becomes apparent.

12. However, while these and other important reforms have had a significant impact of enhancing the Tribunal's effectiveness, the Tribunal's hope for the ultimately effective and efficient discharge of its mandate rests in the request it has submitted to the Security Council for an amendment of its Statute to provide for the election of ad litem judges. Such additional judicial manpower is considered critical to the Tribunal's completion of trials at first instance by 2008 instead of the originally envisaged date of 2017, based on the criminal investigation strategy of the Prosecutor. These are the initial outlines of the Tribunal's "exit strategy", which will be further amplified based on the decision of the Security Council on the Tribunal's request for additional judges to expedite trials of the several individuals awaiting trial at the Tribunal.

III. Recommendations of the Expert Group and status of implementation

Recommendation 1

In order to reduce delays caused by preliminary motions filed when an amended indictment includes new charges, the periods of time given under rule 50 for filing such motions should be considered as a maximum, which could be shortened at the discretion of the Trial Chamber if it believes the circumstances so permit or require (para. 37).

Comments of ICTY

13. Delays have been eliminated or reduced through the adoption of rule 65 ter (B) of the Rules of Procedure and Evidence in November 1999, which provides that "the Pre-Trial Judge shall under the authority and supervision of the Trial Chamber seized of the case, coordinate communication between the parties during the pre-trial phase". The Pre-Trial Judge now ensures that the proceedings are not unduly delayed and takes measures necessary to prepare the case for a fair and expeditious trial.

Comments of ICTR

14. The judges have instituted a new practice regarding frivolous motions. As a result, there has been a marked reduction in delays caused by such motions.

Recommendation 2

In order to eliminate the difficulties that result from disqualification from trials of judges of Trial Chambers who confirm indictments, further consideration should be given to the view that confirmation of an indictment automatically results in disqualification of the confirming judge (para. 45).

Comments of ICTY

15. The problem has been remedied through the amendment of rule 15 (C) of the Rules of Procedure and Evidence in November 1999, which stated that "a judge who reviews an indictment against an accused shall not be disqualified for sitting on the bench of the Trial Chamber". Whereas previously the President had to conduct a significant amount of juggling to avoid assigning a judge to a case under an indictment he/she had confirmed, the composition of the respective Trial Chambers is now significantly less complicated.

Comments of ICTR

16. The problems have been eliminated because the President can now assign judges whether or not a judge was a pre-trial judge, which increases the flexibility for the assignment of judges to trials. The difficulties that arose in the past in this context have thus been overcome, eliminating this issue as a potential or actual delay factor in judicial proceedings at both Tribunals.

Recommendation 3

In order to reduce unduly long pre-trial detentions, the Tribunal might wish to consider whether the right of an accused who had voluntarily surrendered to be tried in person is waivable by the accused following his initial appearance and, if so, consider a consequent rule that would provide for provisional release if the Trial Chamber were satisfied that:

(a) The accused had freely and knowingly consented to trial in absentia;

(b) The personal circumstances of the accused, including character and integrity, as well as State guarantees for his appearance and other appropriate conditions were such that the likelihood of his not appearing for trial were minimal; and

(c) Defence counsel gave a solemn commitment binding themselves to participate in a trial in absentia, should one occur (para. 54 and footnote 14).

Comments of ICTY

17. The judges have considered the question of trial in absentia on many occasions throughout the life of the Tribunal. The proposal of the Expert Group was considered in plenary in July 2000, at which time a policy paper on the issue was presented, but no amendment to the Rules was agreed upon.

18. Nevertheless, the Tribunal has taken a number of other measures since the Expert Group report was prepared in order to shorten the pre-trial detention of accused. In combination with the decision to conduct six trials at the same time by making use of ad litem judges, measures were taken also to allow the Senior Legal Officers a recognized role in the pre-trial management. As a result, the judges can focus more on the ongoing trials; and the Senior Legal Officers, on the pre-trial phase, under the guidance of a pre-trial judge. This system allows for shorter pre-trial periods since much of the pre-trial work can be conducted by the Senior Legal Officer while the pre-trial judge is occupied with the ongoing trial.

19. In addition, the current rule 65 (B), as modified in November 1999, allows for the possibility of provisional release even though exceptional circumstances do not apply, thus widening substantially the grounds for provisional release. As a result of the application of this rule, as well as the substantially improved cooperation between the Tribunal and various jurisdictions in the former Yugoslavia, the Tribunal is able to release detainees provisionally, since it can now be expected that accused persons who fail to appear for trial will be handed over to the Tribunal. Provisional release has been granted in at least six cases during the past 18 months. It needs to be emphasized, however, that a decision on provisional release will have to be based on individual factors. An important one is the voluntary surrender of the accused. But other factors, such as the guarantees provided by the relevant authorities and the accused, possible interference with victims and witnesses, etc., all have to be taken into account in such decisions.

20. Furthermore, since the amendment of the above mentioned rule and the subsequent provisional releases, there is an indication of an increase in the number of voluntary surrenders to the International Tribunal. During 2001, for example, eight indicted individuals voluntarily surrendering themselves to the custody of the Tribunal.

Comments of ICTR

21. This issue was not applicable to ICTR.

Recommendation 4 (a)

In order to facilitate a subsequent trial, the rule 61 proceeding might be amended to permit evidence produced at such a proceeding by the prosecution to be utilized at a subsequent trial following the arrest of the accused if at the time of that trial the witness has died, could not be found, was incapable of giving evidence or could not be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable; moreover, to protect the interest of the accused, counsel could be assigned to represent the accused during the rule 61 proceeding (footnote 16).

Recommendation 4 (b)

Alternatively, in order to avoid the disqualification of the entire rule 61 Chamber and to shorten the proceedings, the rule 61 proceedings could be amended to vest in the confirming judge alone the power, upon application by the Prosecutor and on satisfaction of the judge, to issue an international arrest warrant and order the freezing of the assets of the accused (footnote 17).

Comments of ICTY

22. Rule 61 was used on at least four occasions during the early years of functioning of the Tribunal. It remains a valid tool for putting pressure on States to surrender indicted persons, but has not been used recently as the judges have been fully occupied with active trial and pre-trial proceedings; and it has been determined that the resources and efforts should be focused on those accused who are present before the Tribunal.

23. The issue raised in this recommendation, namely how to make use of testimonies, documents, etc., presented in one case and their use in other cases, is an issue which has been given much attention by the Tribunal and for which various rules have been elaborated. First, rule 92 bis creates the opportunity to admit a written statement by a witness instead of live testimony of a witness. Such a statement may be either a new statement of a new witness, or a statement (or transcript of a testimony in a previous case) by a witness that has already been heard by the Tribunal. As recommended by the Expert Group, the rule also permits the Trial Chamber to admit the statement of a person who has since died. Since the adoption of rule 92 bis in December 2000, it has thus far been used on 15 missions to Denmark, Sweden, Norway, Switzerland, France, Germany, Austria, Croatia and Bosnia and Herzegovina, for a total of 179 witnesses. Of these missions, 80 per cent were in Bosnia and Herzegovina and Croatia, 15 per cent in Denmark, Germany, Switzerland, France, Austria, and 5 per cent in Sweden and Norway. Said written testimony may then be legally used in court in place of a witness appearance, thereby enabling considerable cost savings in comparison with the costs related to each witness appearance. On the average, 15 per cent to 25 per cent of the testimonies of witnesses presented for a case are now provided on the basis of rule 92 bis and this percentage is growing as parties become more accustomed to the rule. For example, in the *Milošević* case, the prosecution has indicated that it intends to call 110 witnesses in person and to submit a similar number of statements under the rule.

24. It is important to bear in mind, however, that the admission of such a statement can still be followed by live cross-examination of the witness by the accused, if the Trial Chamber so decides on the basis of rule 92 bis, paragraphs (A) (ii) (c) and (E). Furthermore, rule 92 bis can only be used to establish facts of a more general nature and not to prove "acts and conduct of the accused as charged in the indictment".

25. In addition, according to rule 94, judicial notice can be taken by a Trial Chamber of adjudicated facts or documentary evidence from other proceedings. This rule eliminates the need of having to present again to the Tribunal facts or documents which have been presented earlier. Although this rule is less frequently used than rule 92, it can still contribute to a substantial shortening of the trial.

26. As to recommendation 4 (b), the aim of rule 61 is not so much to obtain the sanctions of an international arrest warrant and freezing of assets (both of which could be ordered by a single judge), but to allow public scrutiny of the evidence against an accused who is refusing to submit to justice and is being sheltered by a State which is not complying with its obligations to the Tribunal, thereby leading to public condemnation of both accused and State.

Comments of ICTR

27. This was not a concern for ICTR as accused were in custody from the beginning.

Recommendation 5

In order to reduce the potential for obstructive and dilatory tactics by assigned defence counsel, the amount of legal fees allowed might properly take into account delays in pre-trial and trial proceedings deemed to have clearly been caused by such tactics; though this is not to recommend that the Chambers become enmeshed in all the details of remuneration of assigned counsel, but rather that they simply exercise an oversight function (footnote 23).

Comments of ICTY

28. Rule 46 (C) relating to misconduct of defence counsel was modified during the plenary session in December 2001 to allow the Chambers to mention, in their decisions and orders, if a motion submitted by the defence or prosecution seems to be dilatory. On the basis of such assessments by a Trial Chamber, and on its own review of the defence motions submitted, the Registry audits invoices, and refuses payment of certain fees if justified. During 2001, fees were refused in this context in approximately five cases.

29. Furthermore, effective 1 January 2001, a new regime regulating payment to a defence counsel is now in place. It takes into account several factors, such as the use of flat rates and payment relating to the complexity of cases. The main objective of the regime is to secure that the right of defendants to equality of arms (this means that the defendant finds himself in the same position as the Prosecutor with regard to the financial means available to each of them) is guaranteed, while limiting any incentive by the defence to unnecessarily prolong the proceedings through dilatory tactics. Some of the main principles of this complex issue can be identified as follows:

(a) The fair allocation of resources between more complex defence cases and simple cases. This is a measure introduced by the Registry, and approved by the judges in 2001. This payment system not only allocates fair resources to the defence cases, but also restricts counsel from submitting possible unfounded claims as much as a legal aid system itself possibly could. For instance, one case relating to instances of killing and rape is now in the appeals phase. The defence has appealed almost every aspect of the judgement and constantly makes representations to the Registry for more resources. The new payment system, however, provides for the criteria to rank the case at level 1, the lowest level. Therefore, the available resources are limited at the beginning of the appeal. The constant auditing of the defence invoices ensures further compliance with the rules of the Tribunal, i.e. the efficient use of the financial resources of the defence. However, the resources can only be reduced to a certain level. Below this level, fair trial is not guaranteed, and the entire functioning of the Tribunal is potentially affected, including its professionalism and credibility.

(b) The requirement to use financial resources as efficiently as possible without interfering with the right of the accused to equality of arms. This requirement is at all times kept in mind when deciding on allotments to defence teams, be it fees, travel or other expenses, as well as when creating the new payment practice of the Registry. As an example, two cases are cited. In a case related to a crisis committee in a Bosnian municipality, the pre-trial phase was delayed due to various factors, including a contempt-of-court proceeding against a counsel. Based on the old payment practice, the defence claimed reimbursement for 40 months of pre-trial work (7,000 working hours for the lead counsel). Owing to the delay, the Registry lowered the monthly maximum billable working hours, but still had to acknowledge 4,000 working hours due to the delay. Had the new system been in force at the time, the case would have been initially ranked at level 2, providing for only 2,100 working hours for counsel. The second example relates to two different cases. Over a period from March to July 2001, both cases were in trial, but one under the old payment system and one under the new payment system. The savings under the new system were roughly US$ 54,000, or $10,800 per month (i.e. costing $172,748 under the old system and $118,097 under the new system). Another example relates to the detailed approval and auditing process for costs. About 10 per cent of defence claims are questioned or refused based on the rules and practices of the Tribunal. For example, a travel authorization request for a trip of an attorney from Zagreb to New York costing about $8,000 was refused following review by the Legal and

Witness Division, since it was neither necessary nor efficient.

(c) **The requirement to manage the legal aid system with minimal staffing resources.** The Registry receives about 180 invoices per month and about 100 travel authorization requests per month. Each of these invoices or requests has to be verified on their merits, as mentioned above, even though each application has potential impacts on the fair trial. The following may serve as an example. The refusal of an invoice item or items is explained to a defence counsel by a letter. The Registry sends out about 18 to 20 such letters for fee claims to counsel per month. The new payment system bundles all work of counsel for the familiarization with the case in a fixed fee of $2,000. In the past, attorneys invoiced the Tribunal for approximately 10 hours for familiarization with the case and about 30 hours for familiarization with the rules and general orientation. Under the new procedure, expenses are reduced from approximately $4,400 to $2,000, per accused.

Comments of ICTR

30. See comment on recommendation 1. The increasing willingness of ICTR judges to declare a motion frivolous if it is found to be so (with a direction to the Registrar not to pay fees to defence counsel for work undertaken on such motions) has had a salutary effect on the potential for obstructive and dilatory tactics. In 2000, 11 motions were qualified as frivolous, compared to only one motion so qualified in 1999; and three were the subject of such rulings in 2001. Another measure that has had an impact on potential dilatory tactics is rule 45 ter on the availability of counsel, adopted on 21 February 2000. Rule 45 ter provides:

> "(A) Counsel and co-counsel, whether assigned by the Registrar or appointed by the client for the purposes of proceedings before the Tribunal, shall furnish to the Registrar, upon date of such assignment or appointment, a written undertaking that he will appear before the Tribunal within a reasonable time as specified by the Registrar;
>
> "(B) Failure by counsel or co-counsel to appear before the Tribunal, as undertaken, shall be a ground for withdrawal by the Registrar of the assignment of such counsel or co-counsel or the refusal of audience by the Tribunal or the imposition of any other sanction by the Chamber concerned."

31. The combination of these two measures has greatly reduced instances of motions on interlocutory matters as well as situations, compared to what had happened in the past, where the judicial proceedings of the Tribunal had been delayed by the non-availability of defence counsel. Furthermore, ICTR judges have increasingly and consistently overruled attempts by detainees to obstruct trials. Examples of such decisions have occurred in the "*Media*" trial of three former Rwandan journalists in which a detainee attempted to obstruct the proceedings by his refusal to attend courtroom sittings in his trial and refusing to cooperate with his defence counsel. In the *Kajelijeli* case, in which the detainee sought to delay his trial on medical grounds, the Trial Chamber found insufficient reason to adjourn the trial.

Recommendation 6

In order to curtail excessive motions, the Chambers might:

- **Consider a rule requiring that, before any motion is presented, it first be discussed between the prosecution and the defence, between themselves, with a view to resolving the matter by agreement (para. 71);**
- **Consider the so-called "rocket docket" techniques utilized by the United States District Court for the Eastern District of Virginia to move cases expeditiously (para. 71);**
- **Consider adapting for use by ICTY and ICTR the "omnibus hearing" process for managing motions before trial (paras. 72-73);**
- **Consider requiring that, unless otherwise ordered by the Trial Chamber, motions be made and responded to orally (para. 74).**

Comments of ICTY

32. The recommendation reflects the current practice of requesting parties to first discuss a question in dispute before filing a motion and will continue to be implemented by the judges. Decisions are given orally by judges when the legal issue is not complicated, and Chambers will endeavour to ensure that this practice is

followed uniformly. Furthermore, in addition to the development of such pre-trial procedures, a Directive on the length of Briefs and Motions submitted by the Parties was issued on 19 January 2001 to address the issue. The effects of the directive are yet to be evaluated, but indications are positive.

33. In the event the case concerns dilatory tactics through the submission of excessive motions by a defence counsel, the Chambers may further apply the aforementioned rule 46 (C) relating to misconduct of defence counsel.

34. Since the above-mentioned practices have lead to significant progress towards the reduction of excessive motions, the Tribunal takes the view, after consideration, that the incorporation of very specific national solutions, such as the suggested so-called "rocket docket" techniques and the "omnibus hearing" process, are not applicable in the setting of an international criminal tribunal.

Comments of ICTR

35. The impact of rule 73 (A), which provides for the disposal of motions on briefs, has been a reduction in the backlog of motions. Similarly, other rule changes have created a new situation in which this problem has been effectively addressed.

Recommendations 7, 9 and 10

In order to expedite trials, the Trial Chamber might accelerate and make general the practice of forcefully utilizing existing rules dealing with the presentation of evidence or promulgate and implement further rules to assert greater control over the proceedings, including adjournments, while protecting the legitimate interests of the accused (paras 76-78).

In order to further expedite trials, the functions currently assigned to the pre-trial judge to try to reach agreement between the parties on the conduct of the trial might be expanded into a more interventionist role, inter alia, including authority to act for the Trial Chamber under ICTY rule 65 ter (D) and making a pre-trial report to the other judges with recommendations for a pre-trial order establishing a reasonable format in which the case is to proceed (para. 83).

To help in eliminating the need for the introduction of potentially massive amounts of evidence, judges might require that, when there is no apparent dispute as to certain facts, the party declining to so stipulate, explain why (para. 84).

Comments of ICTY

36. The Tribunal agrees fully with these recommendations and the philosophy behind them. As already indicated, in combination with the implementation of the decision to have the assistance of ad litem judges, the pre-trial procedure has been made subject to closer scrutiny. This has led to various amendments to rule 65 ter, all with the intention to have a more active and strict control over the pre-trial procedure by introducing the possibility of a more active role of the pre-trial judge, as well as the possibility to delegate parts of the pre-trial activities from the judges to the Senior Legal Officers in Chambers. In accordance with rule 65 ter (D) (ii), work plans are implemented, setting out clear deadlines for the different pre-trial steps that have to be taken. This entails further that the parties have to strictly observe time limits. As indicated above, the Senior Legal Officers hold regular meetings with the parties to observe the progress in the work plan. On the average, such meetings take place every four to six weeks. Problems identified during the meetings are reported to the pre-trial judge or the Trial Chamber. With an effective cooperation of the parties and a strict observation of the work plan, the pre-trial phase can be completed in roughly six to eight months.

37. One of the regularly recurring issues during such meetings, as well as during regular status conferences, which take place every 120 days in a case, is the issue of the agreement on facts between parties. Obviously such agreements preclude the need for proving such facts during trial. The effectiveness of such an approach, however, depends entirely on the willingness and spirit of cooperation of the parties.

Comments of ICTR

38. See comments on recommendation 5 regarding control of proceedings and adjournments. As regards issues of the presentation of evidence, the recommendation has generally been implemented, but its impact has varied in different cases.

Recommendation 8

In connection with the objective noted in recommendation 7 above, in attempting to control the presentation of witness testimony, the Trial Chambers might consider, to the extent not currently the practice, permitting offers of proof to protect the rights of a party whose evidence is excluded (footnote 25).

Comments of ICTY/ICTR

39. This recommendation reflects the current practice of the judges to ensure that the parties are treated equally and to permit offers of proof to protect the rights of the party whose evidence is excluded in accordance with rule 73 bis (D) and rule 75 ter. In this regard, it is essential to ensure that while ensuring the legal rights of the accused and striving to limit the court hours, the rights and security of witnesses are not compromised.

Recommendation 11

Further consideration should be given to greater use of judicial notice in a manner that fairly protects the rights of the accused and at the same time reduces or eliminates the need for identical repetitive testimony and exhibits in successive cases (para. 85).

Comments of ICTY

40. As more appeal judgements are issued, greater use of judicial notice is made possible. According to rule 94, judges may decide *proprio motu*, or at the request of parties, to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings. A Chamber can reserve its legal findings of the adjudicated historical, geographical, administrative and military context until the end of the trial. This practice has been successful thus far in producing concrete results. However, bearing in mind the first and foremost principle of justice of the right of the accused to a fair trial, the Chamber is somewhat reluctant to rely extensively on adjudicated facts or documentary evidence.

Comments of ICTR

41. The impact of this recommendation is of a limited nature because the judges have been disinclined to rely extensively on adjudicated facts to the fullest extent possible due to concerns about the protection of the rights of the accused. An illustration of this cautious approach in ICTR is the recent Decision on the Prosecutor's Motion for Judicial Notice of Adjudicated Facts by Trial Chamber I, dated 22 November 2001, in *The Prosecutor v Elizaphna Ntakirutimana and Gerard Ntakirutimana* (case Nos. ICTR-96-10-T and ICTR-96-17-T). Deciding, inter alia, on a request by the Prosecutor to take judicial notice that there were "widespread and systematic attacks" throughout Rwanda, the Chamber stated "that it accepts that judgements of this Tribunal have established that from April 1994, in Rwanda, attacks were suffered by civilians on grounds of their perceived political affiliation or ethnic identification. However, the prosecution's request is far-reaching and relates to the situation 'throughout Rwanda'. The Tribunal's findings so far do not relate to all prefectures of the country, but only to certain regions ... the Chamber does not take judicial notice of item 3 of the annexure, as formulated by the prosecution." But the Chamber left the door open to the possibility of a future favourable decision on judicial notice by stating in its decision that its deliberations "should not exclude the possibility that certain facts alleged ... may be judicially noticed in a different context".

Recommendation 12

In order to reduce the length of trials, Trial Chambers might consider:

- **The use of prepared testimony, i.e., written testimony submitted in advance in question-and-answer form, with an opportunity given to the other party later to object to questions, and the witness being later made available for cross-examination; and/or**
- **The preparation of a dossier by the prosecution containing witness statements, with comments by the defence, to enable the Trial Chamber to select relevant witnesses for oral testimony and to admit certain witness statements as documentary evidence (para. 88).**

Comments of ICTY/ICTR

42. In principle, all parties agree with the underlying rationale of utilizing prepared testimony. This practice is being implemented already in several cases. Parties highlight parts of a witness statement that is in dispute in order to cross-examine the witness on this particular point.

43. However, the second part of this recommendation is partly rejected. According to rule 73 bis, "Pre-trial conference", the Chamber receives the file from the pre-trial judge. If the Chamber considers that an excessive number of witnesses are being called to prove the same facts, the judges may then call upon the Prosecutor or the defence counsel to shorten the estimated length of the examination-in-chief for particular witnesses, or to reduce the number of witnesses.

44. Furthermore, since the implementation of rule 92 bis, which allows for a written testimony in lieu of oral evidence presented by a witness in court which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment, the use of written testimony is and continues to be considerably increased as indicated in paragraph 23 under recommendation 4 (a).

Recommendation 13

In order to expedite the trial and enable the Trial Chamber to focus on the real issues, it might:

- **Require counsel for the accused, following disclosure by the prosecution of its case to the defence, to describe in general terms the nature of the defence, indicating the matters on which she/he takes issue with the prosecution and stating the reasons in relation to each. This course would also simplify the prosecution's duty to make disclosure, which at present calls for prosecution guesswork, and can thereby cause trial delay as well as the incurrence of unnecessary prosecution time and expenditure (para. 89);**
- **Require counsel for the accused, when cross-examining witnesses able to give evidence relevant to the defence, to inform them of the nature of the defence if it is in contradiction of their evidence (para. 90).**

Comments of ICTY

45. The proposed practice was accepted by the plenary session, held in November 1999, and is incorporated within rule 65 ter, and rule 90 H (ii) of the Rules of Procedure and Evidence (Rev. 17) defining in general terms disclosure of the nature of the defence case and is frequently used in court and regularly enforced by Chambers in order to prevent unnecessary trial delay.

Comments of ICTR

46. The judges considered the recommendation and, after a thorough discussion, concluded that implementation of the recommendation would not be in the interests of justice in the light of ICTR experience.

47. Generally, it is important to stress that the burden on the prosecution of proving its case requires it to produce the evidence upon which it will rely. It does not give a complete picture of the trial process to state that the process of disclosing "in general terms the nature of the defence" should or would have any bearing on the prosecution's duty to make disclosure. It is for the Prosecutor to determine what her case against an accused consists of and to disclose any evidence upon which she proposes to rely. It is axiomatic that if the Prosecutor has the burden of proving her case, the defence can, at the end of the proceedings, simply state that the Prosecutor has failed to discharge the burden. To place upon the defence an extra burden of stating a defence in general terms can accomplish little. The disclosure of specific defences in advance is, of course, useful and provision is made for this in the current Rules of Procedure and Evidence. The current rule 67 (A) (ii) requires the defence to provide to the Prosecutor details of any alibi to be presented, and rule 67 (A) (iii) requires the defence to provide to the Prosecutor details of any special defence, including the evidence supporting it.

48. While rule 67 (B) preserves the right to place evidence supporting an alibi or special defence before a Trial Chamber even in the absence of such notice, the jurisprudence of the Tribunal shows that a Trial Chamber will require good cause to allow rule 67 (B) to be invoked and will weigh the lack of notice and disclosure in the balance when considering the credibility of the alibi or special defence: (*Prosecutor v. Kayishema and Ruzindana*, Decision on a Prosecution Motion for a Ruling on the Defence

Continued Non-Compliance with Rule 67 (A) (ii) and with the Written and Oral Orders of the Trial Chamber, case No. ICTR-95-1-T, Trial Chamber. II, 3 September 1998.

49. In this context it is noted that there are wide powers vested in a Trial Chamber to require defence disclosure in appropriate cases if it is in the interests of justice to so order. For example, in ICTY, in an appropriate case, the Tribunal has decided that the disclosure of witness statements made by defence witnesses after the witnesses had given evidence-in-chief may be ordered. The basis of the order was the inherent power of the Tribunal consequent on the need to regulate its proceedings and carry out judicial functions. *Prosecutor v. Tadić*, Judgment, IT-94-1-A, Appeals Chamber, 15 July 1999.

50. As stated above, the ICTR judges felt that there was no clear need for such a rule change. However, they continue to keep the matter under review.

Recommendation 14

As is the consensus between ICTY and ICTR judges, the major objectives of the Security Council would be fulfilled and the resolve of the international community demonstrated if civilian, military and paramilitary leaders were brought to trial rather than minor perpetrators (para. 96).

Comments of ICTY

51. ICTY is fully in agreement that the interests of justice and the effective fulfilment of the mandate will be fulfilled if high-level civilian, military and paramilitary leaders are tried before the Tribunal instead of minor perpetrators. All efforts are being made to bring the indictees in the higher echelons of responsibility before the Tribunal, and resources are being allocated accordingly. This has resulted in the transfer of Slobodan Milošević to the Detention Unit in The Hague in June 2001. Furthermore, since the issuance of the Expert Group report in 1999, several high-profile accused have been transferred to The Hague, including the military leader, General Blaskić, former minister Ms. Biljana Plavsić and Radislav Krštić.

52. It is important to note that the Tribunal also focuses on the apprehension of so-called "notorious offenders" who may not be of as high rank as the individuals mentioned, but nevertheless stand accused of committing crimes of such horrendous nature that their respective prosecutions are just as important.

53. Notwithstanding the above, the success of the Tribunal in this regard is, of course, fully dependent on the cooperation of Member States and international organizations, particularly in the pursuit of war crimes indictees Radovan Karadžić and Ratko Mladić.

54. With regard to the lesser grave offenders, prosecution is carried out by the national courts, notably in Bosnia and Herzegovina under the so-called "Rules of the Road" scheme, as established under the Rome Agreement and the Dayton Peace Agreement, a process wherein the Tribunal actively performs a screening role and assists the national judiciary.

Comments of ICTR

55. This has always been the policy and the reality at ICTR. The Tribunal has gone a long way towards fulfilling the intention of the Security Council in this respect. That many high-ranking accused persons have been apprehended and detained in the custody of the Tribunal is recognized in the original report of the Expert Group. ICTR has indicted, arrested and convicted a former head of government (Jean Kambanda, former prime minister of Rwanda) on charges of genocide and crimes against humanity and he is currently serving a sentence of life in prison. Of the more than 50 individuals in the Tribunal's custody, 11 are former cabinet ministers in Mr. Kambanda's Interim Government of 1994, and several others are high-ranking military commanders, political leaders and senior regional administrators. These achievements represent marked progress in fulfilling the Tribunal's purpose of ensuring the personal accountability of political and military leaders for serious violations of humanitarian law.

Recommendation 15

In order to increase awareness of the role of the Tribunals in protecting and enhancing humanitarian values, the Tribunals should continue their outreach programmes (paras. 97-98).

Comments of ICTY

56. The Tribunal fully shares the opinion of the Expert Group and submits that the Outreach

Programme is indeed very active. At present the Outreach Programme has five offices, in The Hague, Zagreb, Sarajevo, Belgrade and Pristina, with four staff members placed in The Hague and two staff members in each office in the region carrying out a variety of activities.

57. In addition to receiving and delivering special information briefings to groups from the region visiting the Tribunal, the Outreach Programme regularly holds symposia on various topics in the region. In 2000, four symposia were held, providing a general introduction to the International Tribunal for the Former Yugoslavia as well as an opportunity to meet ICTY officials. Approximately 60 to 70 persons attended each event. Such efforts continued and were expanded in 2001, when eight events took place in the region: two events on a general introduction to the International Tribunal for the Former Yugoslavia and an opportunity to meet ICTY officials, with approximately 60 to 70 attendees per event; and another six events with seminars for specific target groups (media and legal professionals) held approximately 25 participants and 60-70 observers per event.

58. Since its inception, the Outreach Programme has developed the Bosnian-Croatian-Serbian language (BSC) segment of the web site to include translations into BCS of all basic legal documents, all public indictments, all judgements issued thus far, numerous Trial and Appeals Chamber Orders and Decisions, as well as general information about the indictments, proceedings and the general functioning of the Tribunal. Additionally, the Outreach Programme provides translation of all ICTY press releases into BCS so as to ensure timely information about the events at the Tribunal and/or related to it.

59. In addition to maintaining regular contacts with media representatives as well as those of the legal community and NGOs in the region so as to provide timely and accurate information about the functioning of the Tribunal, the Outreach Programme also distributes ICTY documents in BCS in the region in order to facilitate archives in law schools and libraries, courts, media houses and NGOs and provide other interested groups and individuals with ICTY material. Most basic legal documents, the Milošević indictment and some information materials are also produced in the Albanian language and distributed in Kosovo. On the same note, the Outreach Programme has produced a 55-minute information video on ICTY in English, BCS and Albanian and has distributed the video widely in the region.

60. In order to keep ICTY officials up to date with the developments in the region, the Outreach Programme also provides daily media monitoring from all of its offices in the region as well as an overview of domestic war crimes trials in the region so as to provide consolidated information on the developments in each location.

Comments of ICTR

61. In Rwanda, the establishment of the ICTR Information and Documentation Centre has resulted in significantly increased understanding and support for the Tribunal. A total of 21,000 individuals, mainly Rwandan citizens, visited the Centre in 2001.

62. The ICTR Information and Documentation Centre provides written and audio-visual information on the work of the Tribunal to the Rwandan populace in English, French and Kinyarwanda. Some judgements and judicial decisions of the Tribunal have already been translated into Kinyarwanda. The Centre also provides library and Internet research facilities on criminal justice and related issues.

63. The inauguration of the Centre in September 2000 was only the second phase of the Tribunal's Outreach Programme, which began in 1998 with the provision of logistical support by the Tribunal for a bureau of *Radio Rwanda* based at the Tribunal. The bureau broadcast the proceedings and judgments of the Tribunal to Rwanda in Kinyarwanda, French and English for several months, although its operations were suspended for reasons that appear connected with funding. Other aspects of the Outreach Programme include bringing Rwandan radio, print and television journalists to Arusha on a frequent basis to report to their home audiences on the judgments and proceedings of the Tribunal, as well as victim-survivors and other civil society representatives, parliamentarians and other opinion shapers in Rwanda. A training seminar for 20 Rwandan judges and magistrates was held in Arusha in 2000 under the auspices of the Outreach Programme, with markedly positive results.

64. From the feedback received by the Tribunal, these initiatives have demystified the previously little-understood proceedings of the Tribunal in the minds of these influential individuals and groups and increased

the institution's relevance to the society whose reconciliation the ICTR was created to facilitate through justice. A major challenge that faces the ICTR Outreach Programme is the need to expand the activities of the programme beyond Kigali, where the ICTR Information and Documentation Centre is located, to the rural communities throughout the country. The Registrar is considering the feasibility of establishing an *ICTR Radio* that would broadcast the work of the Tribunal throughout Rwanda. Plans to undertake mobile exhibitions of the Tribunal's activities throughout the country are at an advanced stage. Further action to enhance the impact of the Outreach Programme along these and other lines will be implemented in 2002.

Recommendation 16

In order to enable ICTR to defer to the national courts of the State, it is recommended that ICTR consider including a rule along the same lines of ICTY rule 11 bis in the ICTR Rules (para. 101).

Comments of ICTR

65. The judges have considered this recommendation not to be viable at this time due to the legal complexities associated with the return to Rwanda of persons arrested in third countries at the Tribunal's request. It would be difficult to implement such a recommendation in the absence of a determination that the national courts of that State have the capacity to undertake the kind of complex trials undertaken by the International Tribunal. As regards the national courts of other States, few if any of the States in the region where ICTR is located (and indeed anywhere in the world) have enacted legislation to confer on their national courts "universal jurisdiction" for crimes under the jurisdiction of the Tribunal, in particular in the context of a formal deferral.

66. Nevertheless, even without such formal "reverse deferral" by ICTR to national courts, States such as Belgium and Switzerland have tried some Rwandan citizens on charges committed in the context of the Rwandan genocide of 1994. At the time, charges were not for the specific crime of genocide per se because, in the case of Belgium, it did not have a law conferring jurisdiction to adjudicate genocide as of 1994 when the crimes were committed. Since then, however, its national laws were amended to confer such jurisdiction. The combination of these two situations would appear to suggest that the implementation of this recommendation is not practicable at this time.

Recommendation 17

(a) In order to eliminate baseless appeals and conserve time that would otherwise have to be devoted to them by the parties and the Chambers, the Chambers might establish a preliminary screening mechanism to verify that they satisfy the grounds for appeal specified in the Rules;

(b) Alternatively, either party might consider filing motions for summary dismissal in cases where it clearly appears that the appeal is frivolous, such motions to be considered expeditiously by the Appeals Chamber (para. 103).

Comments of ICTY

67. The Tribunal agrees with this recommendation, and past experience has already led the Tribunal to take a number of measures, in accordance with those suggested. In the first place, the right to appeal against preliminary motions has been limited to only decisions on preliminary motions challenging the jurisdiction of the Tribunal. All other decisions are subject to a system of leave to appeal. This implies that a bench of three judges has first to decide whether leave to appeal can be granted upon good cause being shown. This is only granted where the party can show that the issue is one of general importance to proceedings before the Tribunal or in international law generally. In the second place, in 2001, an additional measure was taken in order to control the use of the right to appeal in relation to decisions on preliminary motions challenging the jurisdiction of the Tribunal. This measure means that if a bench of three judges decides that an appeal is not in substance related to a jurisdictional question, the appeal shall be dismissed. In addition, a party may not appeal a decision relating to procedure or evidence during the trial unless the Trial Chamber certifies that an appeal is appropriate. This system provides an effective mechanism against any baseless or frivolous appeals, with minimal implications for the workload of the judges. In the latest amendments to the Rules adopted in December 2001, provision has been made for a Chamber to impose sanctions on counsel who raise frivolous motions, including non-payment of fees associated with the motion. As a result of the above

and on the basis of rule 72 (B) (ii), the Appeals Chamber refused leave to appeal in 66 out of 77 cases, granting only 11 such requests.

Comments of ICTR

68. Convictions and sentences are appealable as of right under the Statue. Rule 72 (I), adopted at the seventh plenary, provides for a panel of three appeal judges verifying that the grounds for interlocutory appeals are those specified in new rule 72 (H). ICTR judges support the expedious hearing of interlocutory appeal motions by the Appeals Chamber so that trials are not unduly delayed.

Recommendation 18

In order to ensure that appeals from ICTY and ICTR Trial Chambers are considered only by Appeals Chamber judges, to immunise Appeals Chamber judges from being disqualified from hearing appeals through becoming connected with trials and to prevent the loss of insulation owing to judges being intermingled between the Trial and Appeals Chambers, judges should be assigned exclusively to the Trial Chambers or the Appeals Chamber for their entire term (paras 105-106).

Comments of ICTY/ICTR

69. This recommendation has been implemented. Rule 15, "Disqualification of judges", as modified (recommendation 2 supra) has remedied the problem and contributed to more stability within the Appeals Chamber.

70. Furthermore, with the appointment of two Appeals Chamber judges from ICTR as of 1 September 2001, the Appeals Chamber now has a sufficient number of judges to enable full implementation of the recommendation.

71. It should be noted that, in the case of ICTR, appeals judges have not been intermingled with Trial Chambers. Furthermore, as of 1 September 2001, two additional appeals judges from Arusha took up their duties at The Hague. Thus, there are now sufficient judges in the Appeals Chamber to enable the full implementation of the recommendation in the case of ICTY.

Recommendation 19

In order to facilitate the work of the Judges of the Trial and Appeals Chambers, legal staff assistance to the Judges should be increased in terms of the budget proposals for the year 2000 (para. 107).

Comments of ICTY

72. The support staff to the judges has steadily increased. Compared to 1998 when the support staff on encumbered posts was 33, in 1999 the number was increased to 37; and in 2000 to 45. The number of support staff was further increased to 60 as of December 2001.

Comments of ICTR

73. In addition to the above, there are at present 12 posts in the Appeals Support Unit in The Hague including language posts. This has had the salutary effect of expediting the work of the Appeals Chamber.

Recommendation 20

In order to increase the work capacity of the Appeals Chamber, two further judges and the associated additional staff that would be required should be added to that Chamber, although this proposal might not lead to as satisfactory a result as the permanent separation of the Appeals Chamber (paras. 106-107).

Comments of ICTY/ICTR

74. As stated under recommendation 18, with the appointment of two Appeals Chamber judges from ICTR as of 1 September 2001, the Appeals Chamber now has sufficient number of judges to enable full implementation of the recommendation.

Recommendation 21

In order to meet the need for more judges to deal with the increased workload, the use of temporary ad hoc judges might be favourably considered if it remains the only practical solution for expediting completing of the Tribunals' missions (para. 108).

Comments of ICTY

75. The recommendation has been implemented by the introduction of ad litem judges (temporary judges) to sit on a case-by-case basis. Seven ad litem judges out of a pool of 27 commenced their work in the Trial Chambers in 2001. This reform includes doubling the Tribunals' capacity to conduct trials and, taking into account the policies of the Prosecutor, as a direct consequence thereof, it is expected that the first instance trial mandate will be completed by 2008.

Comments of ICTR

76. The Tribunal, through the Secretary-General, has proposed to address delays through the election of ad litem judges. A proposal is currently before the Security Council.

Recommendation 22

On the long-term question of enforcement of sentences, in order to accommodate the potential number of convicts, it would be advisable for arrangements to be concluded with as many additional States as would be required to accommodate the total number of indictees, including individuals accused in sealed indictments (para. 110).

Comments of ICTY

77. To date, the Tribunal has concluded enforcement agreements with 7 States: Italy (6 February 1997); Finland (7 May 1997); Norway (24 April 1998); Sweden (23 February 1999); Austria (23 July 1999); France (25 February 2000); and Spain (28 March 2000). On 17 October 2000, the Tribunal also concluded an ad hoc enforcement agreement with Germany limited to the enforcement of the sentence of Dusko Tadić.

78. The Tribunal's efforts to conclude additional enforcement agreements are ongoing. One enforcement agreement negotiated in 2001 is ready for signature and is expected to be concluded in the first half of 2002. Discussions and negotiations are also pending with approximately 10 other States. However, a number of constraints are hindering both the Tribunal and potential enforcement States from negotiating and concluding additional enforcement agreements.

79. Foremost, enforcing sentences in States exceedingly far from the former Yugoslavia would hinder families and friends from visiting prisoners, contrary to international instruments which require prisoners to be imprisoned reasonably near their usual place of residence. The prisons of many such States also lack an appropriate socio-cultural environment for persons from the former Yugoslavia, such as the presence of other prisoners with similar socio-linguistic/cultural backgrounds.

80. Additional constraints include the costs involved in enforcing sentences; the lack of domestic legislation which allows for the enforcement of sentences imposed by an international tribunal; the decentralized nature of the domestic prison system and/or the lack of a State-level prison; the prevailing political and popular hostility towards foreigners; and poor prison conditions. Finally, the Tribunal's capacity to enforce sentences is limited by the general inability of enforcement States to accept more than three to five convicted persons each.

Comments of ICTR

81. At present the Tribunal has concluded Agreements on the Enforcement of Sentences with three States (Benin, Mali, Swaziland). The possibility of a single-occasion enforcement by a Member State is under discussion. Negotiations with other countries are in progress. It is important to note that the Tribunal's efforts in this key area of its work are complicated by the unique circumstances of the countries in the African continent that have evinced the political will to enforce the sentences of the Tribunal, but do not have the resources necessary to upgrade their prison facilities to meet minimum international standards. Initiatives in dealing with this problem are being explored. Nevertheless, an important success for the Tribunal is that six of its convicts, including Rwandan Prime Minister Jean Kambanda, were transferred to Mali on 10 December 2001 to serve their prison sentences.

Recommendation 23

In view of the essentiality of the need for well-qualified lawyers in the ICTR Prosecution Section, the training programmes now being conducted should be continued (para. 121).

Comments of ICTR

82. Several trial attorneys and assistant trial attorneys have been trained in trial advocacy skills internally and in the United Kingdom of Great Britain and Northern Ireland.

Recommendation 24

In order to avoid waste of resources and to maximize the impact of investigations, the policy of the Prosecutor should be continued to conduct investigations only where she has a high level of confidence that enough evidence will be available to support an indictment (para. 125).

Comments of ICTY/ICTR

83. The Office of the Prosecutor concurs with this recommendation, and will continue to conduct its investigations according to this policy. It is currently the practice of the Prosecutor to sign a document formally authorizing the commencement of a new investigation, and later to sign a further document formally authorizing the preparation of an indictment. This is to ensure the viability of an investigation before committing resources. It should be noted that, to further address this issue, the Prosecutor is implementing significant changes in her office by which the control over the investigations is being transferred to lawyers with the knowledge and experience to successfully present a case before the Tribunal.

Recommendation 25

In view of the importance of securing qualified personnel in the ICTR Investigations Section, this issue should be carefully monitored on a continuing basis by the Deputy Registrar to ensure that applicable standards are complied with (para. 129).

Comments of ICTR

84. This is no longer an issue. Qualified investigators have since been recruited and are now in post.

Recommendation 26

In order to reduce post-indictment investigations, a case should be "trial-ready" at the stage that the indictment is confirmed and, absent exceptional circumstances, post-indictment investigations should be limited (para. 155).

Comments of ICTY/ICTR

85. The Tribunal and the Prosecutor endeavour to have a case "trial-ready" once the indictment is confirmed. However, in several cases, circumstances beyond the Prosecutor's control come into play. An example is the recent opening of the official governmental archives in Belgrade, which has provided the Prosecutor with additional and vital evidence for several cases.

Recommendation 27

On the assumption that there will be no change in the Prosecutor's policy for ICTR to join indictments to the extent necessary and possible, the Expert Group trusts that maximum care will be taken to ensure that motions for amended indictments and for joinders are sought in a timely and complete manner (para. 165).

Comments of ICTR

86. Joinder issues have now largely been resolved, and the trials can take place with the appropriate groupings of accused persons.

Recommendation 28

ICTY should consider the appointment of a rule similar to ICTR rule 44 bis, which creates a category of duty counsel having the qualifications needed to be appointed as assigned counsel and situated within reasonable proximity to the Detention Facility and the seat of the Tribunal (para. 184).

Comments of ICTY

87. In the experience of the Tribunal, there have never been any difficulties in finding a counsel to represent an accused at short notice; the assigned defence counsel have always managed to appear in

court, even on a day's notice. Furthermore, a number of initial appearances have been conducted in the holiday season or during religious festivals, and counsel has always been available to represent the accused. The Tribunal thus takes the view that the implementation of such a provision is not necessary.

Recommendation 29

Since it is essential that continuous contact be maintained in appeals cases between the Trial Chambers and the Office of the Prosecutor in Arusha and the Appeals Chamber in The Hague, the assignment of two staff members to track, verify and expedite appeals documentation, in coordination with staff assigned for the same purpose in The Hague, is strongly supported (para. 185).

Comments of ICTY/ICTR

88. See recommendation 19. Additionally, there are staff in Arusha specifically assigned to the above-mentioned duties. The result has been increased efficiency including electronic data exchange and far fewer delays in proceedings caused by delays in receiving documentation.

Recommendation 30

In order to help the Victims and Witnesses Section in controlling witness expenditures to the extent possible:

- **The Registrar should be consulted regarding witness arrangements whenever trial adjournments or schedule changes are under consideration;**
- **The Registrar should receive as much advance notice as possible when the summoning of court witnesses under rule 98 is under consideration (para. 191).**

Comments of ICTY

89. With regard to the recommendation for consultations with the Registrar on witness arrangements whenever trial adjournments or schedule changes are under consideration, it should be noted that the Victims and Witnesses Section, for the past six months, has been working on a registry directive that would regulate the procedures, information to be provided and timelines that the parties would need to follow when requesting witnesses to be present in The Hague to testify. In the opinion of the Section, such a directive would best contribute to the efficient management of witnesses' appearance before ICTY.

90. Consultations with the Registrar regarding witness arrangements whenever trial adjournments or schedule changes are under consideration will involve a line of communication well beyond the operational level. A more efficient system that would ensure that the Trial Chambers were more involved in planning and controlling the number and possibly even the identity of witnesses who are required in The Hague at a given time period is required. Currently, the Victims and Witnesses Section is required to fulfil the wishes of the parties relative to the number of witnesses brought to The Hague, however unreasonable the requirements might seem to be.

91. On the recommendation regarding advanced notification to the Registrar when summoning court witnesses under rule 98, the Tribunal would like to emphasize that of the nearly 2,000 witnesses and their accompanying persons who have been brought to The Hague since 1996, only eight witnesses were summoned to appear under rule 98 (i.e. the judges using their own initiative to summon certain witnesses to appear, as opposed to summonses issued by the judges based on the request of the parties (rule 54)). Thus, it is felt that the Expert Group's recommendation does not have any real impact on the efficient operation of the Tribunal.

92. Notwithstanding the above, there have been a considerable number of witnesses who have been summoned or subpoenaed to appear at ICTY. The Registrar should, indeed, as per the Expert Group's recommendation, receive as much notice as possible on such summonses. It is important to note, however, that this issue is of particular importance to the Court Management Section, which is charged with servicing the summonses, and not the Victims and Witnesses Section. The Victims and Witnesses Section will start practical arrangements concerning summoned witnesses only after the receipt of service of the summonses.

Comments of ICTR

93. This recommendation has been fully implemented. The sections in charge of witness-related matters under the supervision of the Registrar have worked closely with the Trial Chambers, the prosecution and the defence to ensure proper coordination whenever trial adjournments or schedule changes are under consideration. Furthermore, the Registrar has adopted comprehensive standard operating procedures that require the parties concerned to provide adequate information and advance notice when witnesses are summoned so as to facilitate cost-effectiveness and ensure the timely appearance of witnesses in Arusha. All the parties have endeavoured to comply with these procedures, which have worked effectively in the past several months. These procedures have also been documented in Operational Guidance prepared by the Witnesses and Victims Support Section in the working languages (English and French) of the Tribunal.

Recommendation 31

In order to enforce the observance of Detention Unit rules by defence counsel:

- **The Commander of the Detention Unit should report promptly to the President and the Registrar incidents of misconduct by defence counsel;**
- **Such reports, as well as alleged abuse of Registry personnel by defence counsel, should be promptly investigated by the Registrar and, as appropriate, referred to the Tribunal or dealt with directly by the Registrar;**
- **Where misconduct is found, the President should report the matter to the appropriate national authority and order removal of the defence counsel from the list of approved defence counsel (para. 197).**

Comments of ICTY

94. The situation has been addressed through the implementation of the Directive on the Assignment of Defence Counsel (article 22 (b) (3)), allowing the Registrar to remove the name of a counsel from the list of approved counsel where there has been a serious violation of the Code of Professional Conduct.

95. Additionally, the President is currently vested with the discretion to grant approval to a judge or a Chamber to report misconduct to the appropriate national authority, in accordance with rule 46 of the Rules of Procedure and Evidence. Furthermore, the Tribunal considers that the recommendation for the President to order the removal of the defence counsel from the list is unwarranted, since this authority lies with the Registrar according to article 20 (B) of the Directive on the Assignment of Defence Counsel. The Registrar is thus authorized to withdraw the assignment of counsel and to strike the counsel off the list of defence counsel, provided that there has first been a decision by a Chamber to refuse audience to assigned counsel for misconduct under rule 46 (A).

96. It should also be noted that an ICTY Bar Association, which would become operational in May 2002, is under establishment through various international initiatives, a process in which the Tribunal is represented and actively involved in a supportive role.

Comments of ICTR

97. Firm disciplinary action by the Registry has reduced cases of misconduct to the "barest minimum".

Recommendation 32

In order to further the legitimate law-enforcement requirements of the Prosecutor, once she shows reasonable grounds under rule 66 of the Detention Rules for cooperative assistance, such assistance should be forthcoming from the Registrar without delay in accordance with the decision of the President referred to in paragraph 198, or the matter should immediately be referred to either the President or the Trial Chamber as provided in that decision (para. 200).

Comments of ICTY

98. The issue in question is a legal technical matter, with little or no impact on the overall efficiency of the Tribunal. The Tribunal is of the view, however, that this recommendation is premised on the Expert Group's assumption that "the presumption of innocence ... does not conflict with the legitimate interests of law-enforcement authorities as they affect detainees" (para. 200). In the same paragraph, the

Expert Group later concludes that in matters relating to rule 66 of the Rules of Detention, "the focus of the Detention Unit and the Registry should be on the legitimate law-enforcement requirements of the Prosecutor rather than on the presumption of innocence which can safely be confided to the protection of the court should the Prosecutor stray beyond proper bounds" (para. 200).

99. The above conclusion of the Expert Group seems to reverse the presumption of innocence by giving the Prosecutor a carte blanche to investigate the accused within the Detention Unit unless the court intervenes to protect the rights of the accused. In fact, the United Nations Detention Unit is a remand centre and, as such, the accused is at all times protected under the aegis of the judiciary. Furthermore, if the accused perceive the staff to be evidence-gathering agents of the Office of the Prosecutor, this would hinder the staff's ability to carry out their functions and might create hostility and resentment among the accused against the staff.

100. In paragraph 199 of its report the Expert Group refers to instances when the Detention Unit and the Registry were reluctant to cooperate when the "Prosecutor has sought the assistance of the Detention Unit with respect to electronic interception of [conduct that the Prosecutor has reason to believe could prejudice or affect ICTY proceedings or investigations] and which the Prosecutor had reason to believe was authorized by rule 66".

101. The purpose of rule 66 of the Rules of Detention is to prevent collusion between detainees; and to that extent, it authorizes the Registrar to prohibit, regulate, or set conditions for contacts between detainees upon the request of the Prosecutor. This rule does not infer that the staff of the Detention Unit should cooperate or assist the Office of the Prosecutor with its investigations. The interception and censoring of phone calls as well as the regulation of visits are carried out in conformity with specific grounds delineated in the rules and regulations, with the objective of facilitating the management of the detention facility (preamble to the Rules of Detention).

Recommendation 33

Procedures should be studied for short-term provisional release of detainees to provide for emergencies such as funeral arrangements or the terminal illness of a close relative under conditions of adequate guarantees from the detainee's country governing removal and return to detention (para. 201).

Comments of ICTY

102. The Tribunal has devised draft rulings delineating a number of conditions for provisional release so that, in an emergency situation, the accused can be released within a day provided, of course, that the relevant Member States are fully cooperating. Several such short-term provisional releases of accused have been granted and carried out successfully in accordance with this procedure. The Tribunal has allowed two accused to attend family funerals.

Comments of ICTR

103. This situation has not arisen in ICTR.

Recommendation 34

Because of the significant amounts paid to assigned counsel and their key role in the statutory scheme of both Tribunals, the issue whether remuneration levels are too high or too low deserves careful attention. Moreover, all possible methodologies for determining the amounts of payments to counsel should be considered (paras. 206-207).

Comments of ICTY

104. The monetary rates of pay for defence counsel were established on the basis of comparative pay scales of similar functions. With respect to allegations that the rates are too low, it is neither possible nor desirable to set the rates of pay per hour based on the experience of a particular Member State. While some defence counsel may consider the rates to be too low, the same rate might be considered by other defence counsel to be quite substantial compared to their domestic rates. As such, the stipulated rates, which might deter top-ranking counsel of some States from applying for the list of assigned defence counsel, may, at the same time, attract top-ranking counsel from other Member States. Furthermore, there are other advantages to appearing before the Tribunal that, to some extent, may compensate the defence counsel for their salary. With respect to allegations that the rates are too high, it is an

intrinsic element of the principle of equality of arms that the defence counsel and the Office of the Prosecutor are similarly treated. If the rates of the defence counsel were lowered, this would create an unfair differentiation between the remuneration levels of the defence and that of the prosecution. The Tribunal maintains its opinion that the Expert Group's suggestion, indicating that the remuneration system should "include an arbitration feature under which the amount would be decided by a commission made up of lawyers and academics" (para. 207), appears superfluous, since article 33 of the Directive on the Assignment of Defence Counsel already contains an arbitration clause under which the Registrar, in consultation with the President, is authorized to decide such disputes.

Comments of ICTR

105. The process of implementing this recommendation is still under way. Any analysis of changes that derive from the implementation of the report of the Expert Group will have to take into consideration the statistics from 1999-2001, including facts and situations.

106. The number of persons detained under the authority of the Tribunal increased from 37 in 1999 to 40 in 2000, and to 52 in 2001, namely an increase of 7 per cent and 23 per cent respectively. The total number of members of defence teams (counsel, co-counsel and defence investigators) increased from 94 in 1999 to 130 in 2000, and to 186 in 2001, namely, 27 per cent in 2000 and 30 per cent in 2001.

107. Following the appointment of a new Registrar, in June 2001 an internal panel was established to undertake a comprehensive review of the legal aid system of the Tribunal. That exercise is still under way, and it is expected that its results will generate further reforms in this area. The panel prioritized its work and decided to tackle as a matter of urgency the issue of the recruitment of members of defence teams. It is currently reviewing the system of payments to defence teams.

108. In the meantime, some corrective measures had already been taken in connection with the conditions of interventions by co-counsel and defence investigators as well as the reimbursement of travel expenses to defence team members under the legal aid programme. These measures are contained in circulars issued by the Registrar dated 13 September 2000 and 26 January 2001, respectively. The intervention of co-counsel is now authorized only 60 days before the trial on the merits. Co-counsel also can only be remunerated for a maximum of 250 hours of pre-trial work and must await the trial on the merits before making further billable interventions (Circular of 26 January 2001). Furthermore, the number of travels to Arusha is limited to three except for purposes of hearings. Lastly, for the appeals stage of any case, only one investigator is now authorized, and the co-counsel, if he/she is reassigned for the purposes of an appeal, cannot submit an invoice for reimbursement beyond a total of 350 hours.

109. A request has been made in the 2002-2003 proposed budget for an investigator for claims of indigence to help in consolidating reforms in the management of the legal aid programme of the Tribunal.

Recommendation 35

In order to ensure that the qualifications required of counsel to be eligible to be assigned as defence counsel are appropriate, the ICTY standards for experience should be brought more in line with those of ICTR, and in both cases elevated to require at least five years of criminal trial experience (para. 210).

Comments of ICTY

110. In accordance with the Directive on Assignment of Defence Counsel (IT/73/REV.8), the Registry submitted for approval to the judges an amendment of the Rules of Procedure and Evidence which requires defence counsel to show "reasonable experience in international and/or criminal law". The amendment entered into force in 2001 and governs the admission of counsel to the list of counsel willing to represent suspects and accused. The Registry finds, however, that a strict limit of five years alone is not a measure which would be able to guarantee proficiency.

Recommendation 36

In order to better ensure accuracy and care in the preparation of claims by defence counsel for defence costs, each assigned counsel might be required to certify to the relevant Chamber as to

the accuracy of and their entitlement to the payments claimed (para. 213).

Comments of ICTY

111. The new payment system referred to in recommendation 5 has resulted in the tighter control of invoices. The Registry regularly consults with the Chambers in the auditing of the counsel invoices and there is therefore mutual agreement before any decision is taken on reimbursement.

Comments of ICTR

112. The Tribunal has also streamlined the verification process for claims by the defence. As a consequence, in a recent case, payment of a claim was denied by the Registrar.

Recommendation 37

In order to resolve the problems resulting from counsel appearing before the Tribunals who are unfamiliar with them and their procedures, with resulting delay and inefficiencies in Tribunal proceedings, training programmes should be developed dealing with the rudiments of Tribunal practice (paras. 214-215).

Comments of ICTY

113. In cooperation with the Coalition for International Justice, the Office for Legal Aid and Detention organized a training programme for 14 defence counsel appearing before the International Tribunal sponsored by the European Commission. The training was offered to defence counsel at the pre-trial stage in order to train them for the trial stage. The four-day training programme began on 24 May 2001 and included presentations by 17 international experts, six of whom were outside experts.

114. During the training, the participants were provided with presentations on the Tribunal's rules, procedures and jurisprudence; the continental and adversarial law systems; international criminal and humanitarian law; and the role and ethics of counsel at the International Tribunal. Attendees also had the opportunity to improve the quality of their practical skills by participating in a mock trial moderated by experienced trial attorneys.

115. Out of the grant received from the European Community, a total amount of euro 86,700 has been allocated to the project. Approximately half of the budget was used for the organization of the seminar in May 2001. The Office for Legal Aid intends to organize one or two seminars for the coming year, depending on the number of new defence counsel assigned by the Tribunal in view of the number of accused transferred to the Tribunal.

116. While the Tribunal is extremely supportive of this kind of training programme, it should be borne in mind that such programmes are fully dependent on the continued receipt of voluntary contributions.

Comments of ICTR

117. The Tribunal is exploring the feasibility of conducting such a training programme in 2002.

Recommendation 38

In order to reduce the costs and delay associated with changes of assigned counsel, the requirement that a change of counsel will be permitted only on a showing of exceptional circumstances should be adhered to, especially if there is any indication that a motion to change counsel is in any way related to efforts by the accused to improve on existing financial arrangements (paras. 218 and 234).

Comments of ICTY

118. This recommendation reflects the current practice of the Tribunal and is reflected in the Directive on Assignment of Defence Counsel. The Registry has in the past adhered to the requirement that a change of counsel should only be permitted in exceptional circumstances, such as an irretrievable breakdown in the relationship between counsel and client, or where counsel have asked to be relieved of their duties for ethical reasons. Moreover, a change in counsel has resulted in delay in only one circumstance, to the knowledge of the Registrar. It has been the practice of the Tribunal to limit potential delay by either relying on co-counsel to take over the proceedings, or by retaining the current counsel to apprise the new counsel of all relevant matters until such time that the new counsel is sufficiently prepared.

Comments of ICTR

119. The recommendation reflects the current practice of the Tribunal. As a result, there has been a reduction in the number of requests for change of counsel granted.

Recommendation 39

If in the future the Registrar, after consultation with the judges, considers it desirable to improve the geographical spread of counsel who can be assigned, this might be done by establishing national priorities for adding new names to the list of counsel who can be assigned, rather than by denying assignment of those already on the list (para. 234).

Comments of ICTY

120. Although paragraph 225 *et sequitur* are directed at ICTR, it is not clear whether this recommendation is intended for both ICTR and ICTY. The Registry therefore submits that it would be inappropriate for ICTY to establish a national priority list in this context.

Comments of ICTR

121. The Tribunal considers this recommendation as not implementable. In practice, efforts to broaden the geographical spread of counsel have had limited results because of the choices of the accused, which, although not a controlling factor, have made this aspiration difficult to achieve to the extent desired.

Recommendation 40

In view of the extensive research needed by the judges, the prosecution and the defence for their work, the Library and Reference Units play a key role and should have the necessary resources (para. 235).

Comments of ICTY

122. Resources for the Library and for the Tribunal's reference and research purposes have increased since 1999. An additional post was added to the Library in 2000, and resources, such as books, access to database and journal subscriptions have increased from $266,000 in 1999 to $310,500 in 2002, a 17 per cent increase. The resources from the assessed budget have provided basic, core legal materials for the Tribunal.

123. In addition to the above, support from the European Commission through voluntary contributions has enabled the Tribunal to acquire additional hardware, software, journal subscriptions and other legal materials which were needed to meet the ever-growing needs of the Tribunal. Furthermore, the voluntary contributions have also allowed the Tribunal to procure training for staff members, to obtain legal information through CD-ROM and query online databases.

Comments of ICTR

124. ICTR increased its combined library book and Lexis-Nexis service resources from a total of $216,000 in 1999 to $394,000 in 2000. During the period 1999-2001, library staff increased from five in 1999 to eight in 2001, representing a growth of 60 per cent.

125. The Library and Reference Unit has performed excellently within its resources, as exemplified by the recent production by the unit of the ICTR CD-ROM, which contains all the Tribunal's case law and basic documents and is the first product of its kind in the United Nations. This innovative product will make the work and achievements of the Tribunal accessible to scholars, practitioners, Governments, the media, non-governmental organizations and the public worldwide.

Recommendation 41

To ensure that the Language Services Sections of the Registries better contribute to the effective functioning of both the Chambers and the Office of the Prosecutor, it is essential that required resources be provided and that priorities be adhered to in the translation of documents (para. 236).

Comments of ICTY

126. The translation problem is seen as one of the most important issues in the Tribunal. It is currently being dealt with by a working group created by the Coordination Council and composed of representatives of all relevant sections of the Tribunal. It will deal comprehensively with all language services issues and recommend ways to resolve problems such as the ever increasing volume of documents requiring translation.

Recommendation 42

In order to better cope with priority translation needs, it is suggested that the Chambers, at the inception of a case, might require the parties to provide, on an ongoing basis, as much advance notice and information as possible with the documents they expect to submit (para. 236).

Comments of ICTR

127. As indicated in the note of the Secretary-General (A/54/850, para. 159), a Translation Facilitation Committee has been set up at ICTR to identify priorities in the translation of documents.

Recommendation 43

In order to give the Chambers powers of supervision and control over their own judicial assistants and secretaries, their internal administrative matters, and budget proposals relating to the Chambers:

- **The current system for the selection of judicial assistants, in which the judges have the decisive voice, should be continued;**
- **Since the judicial assistants and the secretaries work for the judges under their direct control and supervision, the judges should be responsible for, and sign, their performance evaluations;**
- **The judges should be entitled to submit to the General Assembly budget proposals which they feel satisfy their needs;**
- **Each President, as the senior official of the respective Tribunal, should feel free to transmit proposals on the entire Tribunal budget to the Registrar, without prejudice to the authority of the latter to submit to the Secretary-General the overall budget proposals for the Tribunal as a whole;**
- **The Secretary-General might appropriately issue a revised delegation of authority or an administrative instruction realigning, to the Bureau of the Chambers, control over their internal administrative matters (paras. 241-246).**

Comments of ICTY

128. These recommendations regarding personnel have been in effect since the inception of the Tribunal. All staff recruited to work in the judges' Chambers have been selected by the judges themselves, who act as members of the selection panels recommending the best candidate(s) to the Human Resources Section. The judges also actively participate in the evaluation of staff assigned to their office; the reports are signed jointly by the respective judge and a representative of the Registrar's office.

129. The procedures followed by ICTY for the preparation of budget proposals include discussions by delegated officials of the Registrar's office with the President and/or his representatives who are responsible for formulating the resource requirements of that organ. Subsequent discussions are held once the judges' proposals have been formally transmitted to the Registrar, and all final determinations on the resource levels being requested are shared with the President.

130. The last proposal put forward in this recommendation relates to a direct delegation of authority to the judges to assume control over internal administrative matters. This proposal has never been pursued, since an administrative unit within the judges' Chambers would duplicate functions carried out elsewhere in the Tribunal and would serve no additional purpose. At the same time, a fair and consistent application of the United Nations rules and policies is essential for the effective management of all organs of the Tribunal.

Comments of ICTR

131. The first two elements of the recommendation had been implemented before the issuance of the report of the Expert Group. As for the remaining elements (transfer of administrative functions to the judges and the President), these would contradict the practices and procedures followed in the United Nations. The impact of this position on the work of the Tribunal has been positive because it has so far avoided the potential of blurred lines of responsibility and accountability for the administration of the Tribunal. The procedures regarding the budget are identical to those described for ICTY.

Recommendation 44

To avoid disruption of the work of the Office of the Prosecutor through the application of the normal United Nations rules relating to the period of service of interns attached to that Office, consideration should be given to allowing, through an exception to the rules, those interns assigned to trial work to be appointed for a period of one year or the duration of the trial to which they are assigned, whichever is longer (para. 249).

Comments of ICTY/ICTR

132. The Tribunals follow the provision described in the Secretariat administrative instruction ST/AI/2000/9 dated 19 September 2000 governing the conditions and procedures for the selection and engagement of interns. Consideration is given on a case-by-case basis to permit a limited number of personnel to continue beyond the stipulated time frame to assist with a particular item. However, the Tribunals do not and cannot support the substitution of interns for experienced staff in order to carry out core activities, whether in the Office of the Prosecutor or in other functional areas. In addition, the Tribunals have been requested by the General Assembly to ensure that acceptance of interns should be consistent with the established guidelines, rules and regulations, in particular as regards the exceptional nature of a six-month assignment.

Recommendation 45

In order to reduce misperceptions as to the relationship between the Chambers and the Office of the Prosecutor, to increase the efficiency of that Office by giving it control over certain supportive administrative units and to better reflect the independence of the prosecutor, a realignment of administrative matters, through a re-delegation or administrative instruction, should be considered (paras. 250-252).

Comments of ICTY

133. While this appears to be a duplication of the final proposal in recommendation 43, the realignment of administrative support to either the Office of the Prosecutor or the Chambers would lead to duplication of tasks and lack of centralized controls and would reduce the performance capacity and flexibility of the administrative staff to meet overall priorities within the organization.

Comments of ICTR

134. See comments under recommendation 43.

Recommendation 46

On balance, there seems to be no compelling reason for a recommendation that the Security Council amend the Statute to provide an independent Prosecutor for ICTR.

However, the Expert Group trusts that the Prosecutor will find occasion for more frequent visits to ICTR, covering longer periods of time and continuing close oversight of the ICTR prosecutorial operation in order, inter alia, to ensure similar standards in regard to the supervision she exercises over her staff, whether in The Hague or in Arusha/Kigali.

At the same time, some recognition should be given, at the appropriate time in the future, to the special responsibilities which devolve upon the Deputy Prosecutor in Kigali in terms of the more independent nature of his work, which includes day-to-day contact with senior officials in the Government of Rwanda (para. 259).

Comments of ICTR

135. The recommendation of the Group of Experts was made shortly after the arrival of the current Prosecutor, in 1999. The Prosecutor has made a determined and sustained effort to spend more time in both Arusha and Kigali. In 2000, the Prosecutor spent four months in Kigali and Arusha and, in 2001, she spent three months. She has also actively participated in the ongoing trials. In addition, she has sought to address some of the long-standing personnel issues, in particular, the application of the same standards for recruitment to applicants in both Tribunals.

IV. Conclusions and recommendations

136. International criminal justice as reflected in the mandates of ICTY and ICTR is by definition a complex and extremely challenging task. Not only

are the Tribunals pioneers in this new terrain — and in an operational environment, with additional infrastructures and other constraints — they also had to deal with expectations of what could and should be achieved that appear not to be accompanied by a full understanding of these realities. This factor perhaps is attributable to the heinousness of the violations of international law that are the subject of the Tribunals' mandates and the pioneering character of the Tribunals.

137. The Tribunals have achieved a high degree of success in meeting the essential challenges established by the Security Council. The core mission is to bring to accountability and justice the high-ranking political and military leaders that are responsible for genocide, crimes against humanity.

138. Currently ICTY finds itself in a crucial phase of its existence. With the trial of Slobodan Milošević recently commenced, ICTY is demonstrating its determination to fulfil its mandate by giving priority to trying leadership cases. The establishment of an exit strategy aiming at ending trials at first instance by 2008 and transferring cases to local jurisdiction, and the implementation of the remaining recommendations of the Expert Group, thereby improving the efficiency of ICTY and at the same time upholding the highest standards of justice and fair trial, remain an ongoing process with which the Tribunal remains consistently concerned.

139. In convicting for the first time in history a head of Government for the crime of genocide, apprehending and bringing into its custody several cabinet ministers and other senior political and military figures accused of such crimes, and by establishing important precedents for the prosecution and adjudication of sexual crimes, ICTR has made tremendous strides. Seen from this perspective, as identified in the report of the Expert Group, ICTR will ultimately succeed in its mission given the tools it needs to complete its mandate. The report of the Expert Group and the continuing process of implementation of its recommendations have made a critical contribution to the fulfilment of the Tribunal's vision.

140. Accordingly, the General Assembly is requested to take note of the comprehensive report on the results of the implementation of the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.